

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Status of Claims

Claims 1, 6, 11, 19, 21, 23, 29, 32, 34, 37, 39, and 40 have been amended. New claims 41-46 are added. No new matter is added. Claim 17 was previously cancelled. Currently claims 1-16 and 18-46 are pending.

Response to Claim Objections

Claims 1-3, 14, 21, 22, 33, 39 and 40 have been rejected under 35 U.S.C. 103(a) as being unpatentable over GANDHI et al. (US 6,944,449 B1) in views of LEE (US 2004/0165529) and UN et al. (US 5,917,806)

The above rejections are respectfully traversed.

With respect to claim 1, it recites a communication apparatus for a base station. The apparatus comprises a means for detecting various overloads caused on the base station, and a means for implementing a set of control mechanisms to reduce the load. Claim 1 has been amended to recite, “wherein the control mechanism used to reduce the load on the base station is selected based on a plurality of types and a degree of the overload on the base station; and wherein each type is associated with at least one of the parameters.” (Emphasis added).

In the Office Action, the Examiner has rejected claim 1 based on three references: Gandhi, Lee, and Lin.

The Examiner acknowledges that Gandhi does not disclose means for detecting an overload as a result of one of the parameters crossing a threshold; and means for implementing a plurality of control mechanisms to reduce the load on the base station, wherein the control mechanism used to reduce the load on the base station is selected based on a plurality of types and a degree of the overload on the base station. In the view of these differences, the Examiner has cited Lee.

However, the Examiner acknowledges that Lee does not disclose a plurality of control mechanisms to reduce the load on the base station, wherein the control mechanism used to reduce the load on the station is selected based on a plurality of types and a degree of the overload on the base station. In the view of the distinctions underlined, the Examiner cites Lin as disclosing those features.

The Examiner further states that it would have been obvious to a person having ordinary skill in the art at the time of invention, to modify the combination of Gandhi and Lee to include means for implementing a plurality of control mechanisms to reduce the load, and to select a control mechanism to reduce the load based on the type of the overload on the base station.

The factual inquiries that are relevant in the determination of obviousness are determining the scope and contents of the prior art, ascertaining the differences between the prior art and the claims in issue, resolving the level of ordinary skill in the art, and evaluating evidence of secondary consideration. KSR Int'l Co. v. Teleflex Inc. To establish a *prima facie* case of obviousness, the prior art references "must teach or suggest all the claim limitation." M.P.E.P. § 2142. Moreover, the analysis in support of an obviousness rejection "should be made explicit." KSR, 2007. "Rejections on obviousness grounds can not be sustained by mere conclusory statements; instead, there must be

some articulated reasoning the some rational understanding to support the legal conclusion of obviousness.

With respect to the above, the applicant respectfully disagrees with the Examiner in regards to the obviousness rejections raised, because of the following reasons.

First, claim 1 as amended, is distinguished from the combination of Gandhi and Lee with Lin in several ways. For example, Lin does not disclose a plurality of control mechanisms, wherein the control mechanism used to reduce the load on the station is selected based on a plurality of types; and wherein each type is associated with at least one of the parameters.. Instead, in Lin, there is only one type of problem controlled, and that is the problem of routing congestion. Lin does not handle a plurality of types such as those that may be caused due to lack of sufficient power, and rise over thermal condition, as recited in new claim 45.

Second, the suggested combination of Gandhi and Lee with Lin does not lead to the apparatus of claim 1. Even if Gandhi and Lee were to be combined with Lin, the result would not be an apparatus wherein the control mechanism used to reduce the load on the station is selected based on a plurality of types. Instead, the resulting combination would only handle one type of overload, namely routing congestion and not any other types.

Third, Lin teaches away from being combined with Gandhi and Lin because Lin deals with one type of problem, and as such one would be discouraged from combining Lin with Gandhi and Lee. Therefore, there is no teaching, suggestion, or motivation to combine the above references. As such, the combination of above references appears to be "hindsight." The applicant therefore, respectfully submits that the examiner's conclusion of obviousness is based on improper hindsight reasoning.

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Therefore, based on above, the Applicant respectfully submits that the rejection of claim 1 under 103 (a) over Gandhi, in view of Lee, and in further view of Lin is improper. As such, the applicant believes claim 1 is patentable.

The remaining claims have been rejected under 35 U.S.C. 103(a) as being unpatentable over various combinations of the a set of references including: Gandhi, Lee, Li, Laasko, Volfsun, Djuric, Padovani, Bender, Gehi, Kim, kathoh, Anderson, Jang, cheng, and Nagarajan.

The above rejections are respectfully traversed. Independent claims 6, 11, 19, 21, 23, 29, 32, 34, 37, 39, and 40 all have the above noted distinctions recited for claim 1, involving the selection of a control mechanism to reduce the load based on a plurality of types. Neither one of the cited references disclose the distinctions. The other claims, including new claims 41-46 are all dependent on these independent claims and as such they are patentable at least for those reasons listed above for the independent claims.

Furthermore, except for the rejection of Claim 40, the above rejections are identical to the rejections raised by the Examiner in the prior Office Action. As such, the Applicant believes that those claims not amended here, are patentable at least for those reasons presented in the response to the prior Office Action.

Therefore, claims 1-46 are patentable.

Additionally, the Applicant hereby submits a Declaration under 37 C.F.R. 1.31, to further overcome the above rejections in view of the LEE reference. The filing date of Lee is July 25, 2003. The applicant's declaration and the evidence attached to the declaration is presented to show that the Applicant conceived of the present invention in the United States at a date prior to the filing date of Lee, coupled with due diligence from a date prior to at least

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July 25, 2003 filing date of Lee to the filing date of the present application, December 3, 2003.

Therefore, it is respectfully submitted that the rejections should be removed.

Concluding Remarks:

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 17-0026. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 17-0026. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. § 1.136 and authorizes payment of any such extensions fees to Deposit Account No. 17-0026.

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Respectfully submitted,

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